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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6183 OF 2007

Dinesh International Ltd. .... Petitioner

Versus

The Union of India and Ors. ... Respondents

ALONG WITH
WRIT PETITION NO. 6185 OF 2007

M/s. Vipin Enterprises ... Petitioner

Versus

The Union of India and Ors. ... Respondents

Mr. Prakash Shah, V. Sridharan and Mr. Jitu Motwani i/by PDS Legal for Petitioner.

Mr. P.S. Jetly with Ms. Bharti Mahant with Mr. S.D. Bhosale for Respondents.

CORAM: F.I. REBELLO &
J.P.DEVADHAR, JJ.
DATED: AUGUST 31, 2007

P.C.:

. Rule in both the Petitions. Heard forthwith.

. By the common order dated 10.10.2006 in two appeals which were pending before it, the learned tribunal in the case of Petitioner in Writ Petition No. 6183 of 2007 has directed predeposit of Rs. 98 lacs and in the case of Petitioners in W.P. No. 6185 of 2007 has directed pre deposit of Rs.48 lacs. The respondents have raised preliminary objections

that he had served the Petitioners at the address given by the Petitioners and they were not traceable. In the petitions filed before this court, the addresses given is the same place where the respondents had tried to serve them.

. In view of the above, Mr. Dinesh Goel in W.P. No. 6183 of 2007 has filed an affidavit today setting out his business address as also residential address. Similarly in W.P.No. 6185 of 2007 Mr.Dinesh Goel, Director has also filed affidavit setting out his business address as well as residential address.

. It is the case of the Petitioner that considering the general Exemption No.29 read with Notification No.99 of 2000 dated 6.3.2000 once the Petitioners imported any goods in India and produced certificate as required under Rule 11 of the Notification dated 6.3.2006 it is not open to the Custom Authorities in the country of import i.e. India to go beyond the certificate.

. On the other hand on behalf of the revenue their learned counsel points out that mere fact that certificate is issued itself would not preclude the custom authorities from examining whether the goods imported based on the certificate in fact meet the

requirements of import of goods and the general exemption No.29.

. In our opinion the matter requires serious consideration by the tribunal.

. The question is whether in these circumstances the order of predeposit as made ought to be sustained or set aside or varied.

. After having come to the conclusion that there is prima facie arguable case, the only question that we are called upon as set out earlier is the amount of predeposit. In the normal course, the entire amount would have required tobe pre deposited. A power has been conferred in the matter of exemption of deposit. That discretion has been exercised. Normally this court in the exercise of its extra ordinary jurisdiction would not interfere in such matters. The contention of the respondents for assessment is basically based on the import value of the goods in Shrilanka and thereafter exported from Shrilanka into India. In our opinion, considering these aspects and in order to give an opportunity to the Petitioners herein to contest their claims, we propose to vary the order of pre deposit.

. In the light of that the following order :

. In so far as Petitioners in W.P.No. 6183 of 2007 is concerned, who were required to deposit sum of Rs.98 lacs. will deposit sum of Rs. 45 lacs.

. In so far as Petitioners in W.P. No. 6185 of 2007 who were directed to deposit Rs. 48 lacs. will deposit the sum of Rs. 24 lacs. The deposits in both the cases should be made within the period of eight weeks from today.

. Orders to that extent varied. Rule made absolute accordingly. No orders to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**